

**HANDBOOK OF COLORADO  
WRONGFUL DEATH LAW  
SECOND EDITION**



**GREGORY R. GIOMETTI**

**HERB TUCKER  
VICTORIA C. SWANSON**  
*Legal Editors*

*Supplemented*  
• May 2006 •  
• September 2010 •

---

---

**CONTINUING LEGAL EDUCATION IN COLORADO, INC.**  
COLORADO BAR ASSOCIATION • DENVER BAR ASSOCIATION

---

---

# TABLE OF CONTENTS

---

**Chapter 1 OVERVIEW OF WRONGFUL DEATH LAW IN COLORADO**

---

---

**Chapter 2 COLORADO'S WRONGFUL DEATH ACT**

---

- § 2.1 GENERAL RIGHT OF ACTION UNDER C.R.S. § 13-21-202
- § 2.2 LIMITED RIGHT OF ACTION UNDER C.R.S. § 13-21-201
- § 2.3 PROPER PARTIES UNDER C.R.S. § 13-21-201
- § 2.4 DISTRIBUTION OF PROCEEDS OF A WRONGFUL DEATH ACTION
- § 2.5 LIMITATIONS ON DAMAGES UNDER C.R.S. § 13-21-203
- § 2.6 THE SOLATIUM ALTERNATIVE UNDER C.R.S. § 13-21-203.5
- § 2.7 STATUTE OF LIMITATIONS FOR WRONGFUL DEATH CLAIMS
- § 2.8 THE SURVIVAL STATUTE — C.R.S. § 13-20-101

---

**Chapter 3 HISTORICAL EVOLUTION OF COLORADO WRONGFUL DEATH LAW — ABOLITION OF THE NET PECUNIARY LOSS RULE**

---

- § 3.1 STATUTORY CHANGES
- § 3.2 THE NET PECUNIARY LOSS RULE — HISTORICAL PERSPECTIVE

---

**Chapter 4    WHOSE DEATH WILL GIVE RISE TO A WRONGFUL DEATH ACTION**

---

**§ 4.1    WRONGFUL DEATH CLAIM FOR CHILD WHO DIES AS A RESULT OF INJURY SUFFERED AS A FETUS**

§ 4.1.1—Premature Birth As A Result Of Prenatal Injuries

§ 4.1.2—Child Born Alive Is A “Person” For Purposes Of The WDA, Regardless Of The Viability Of The Fetus

**§ 4.2    WRONGFUL DEATH ACTION FOR DEATH OF A FETUS**

**§ 4.3    WRONGFUL BIRTH AND WRONGFUL LIFE**

**§ 4.4    LOGICAL INCONSISTENCIES IN THE COURTS’ RULINGS**

---

**Chapter 5    PROPER PLAINTIFFS IN WRONGFUL DEATH ACTIONS**

---

**§ 5.1    ONLY ONE WRONGFUL DEATH ACTION PERMITTED**

**§ 5.2    “PARENT” OF PERSON ADOPTED AS AN ADULT**

**§ 5.3    PARENTS OF A MARRIED MAN OR WOMAN**

**§ 5.4    EQUITABLY ADOPTED CHILDREN**

**§ 5.5    SIBLINGS**

**§ 5.6    SAME PERSON AS PLAINTIFF AND DEFENDANT**

**§ 5.7    ACTIONS UNDER 42 U.S.C. § 1983 — PARENTS AS PLAINTIFFS**

**§ 5.8    WRONGFUL DEATH ACTIONS ARE NOT ASSIGNABLE**

---

**Chapter 6    ALLOCATION OF PROCEEDS FROM A WRONGFUL DEATH ACTION**

---

**§ 6.1    HEIRS MAY SHARE IN PROCEEDS EVEN IF NOT NAMED AS PLAINTIFFS**

*Table of Contents*

- § 6.2     **DIVISION OF PROCEEDS UNDER CURRENT LAW**
- § 6.3     **DUTY OF INSURANCE COMPANY IN SETTling  
WRONGFUL DEATH CLAIM TO MONITOR DISTRIBUTION  
OF PROCEEDS**
- § 6.4     **NO DUTY OWED BY ATTORNEY WHO REPRESENTS  
SPOUSE IN WRONGFUL DEATH ACTION TO ENSURE  
PROCEEDS ARE PROPERLY DISTRIBUTED TO HEIRS**
- § 6.5     **DIVISION OF PROCEEDS BETWEEN PARENTS —  
STATUTORY CHANGES**

---

**Chapter 7     CONFLICT OF LAWS PRINCIPLES GOVERNING WRONGFUL  
DEATH CASES**

---

---

**Chapter 8     STATUTE OF LIMITATIONS GOVERNING WRONGFUL DEATH  
ACTIONS**

---

- § 8.1     **TOLLING OF THE STATUTE DUE TO DISABILITY**
- § 8.2     **TOLLING OF THE STATUTE DUE TO FRAUDULENT  
CONCEALMENT**
- § 8.3     **ADOPTION OF THE DISCOVERY RULE**
- § 8.4     **APPLICABILITY OF THE DISCOVERY RULE UNDER THE  
CURRENT STATUTE**
- § 8.5     **WRONGFUL DEATH CLAIMS AGAINST A DECEDENT’S  
ESTATE**
- § 8.6     **EXPIRATION OF LIMITATIONS PERIOD FOR UNDERLYING  
MEDICAL NEGLIGENCE CLAIM DOES NOT BAR  
WRONGFUL DEATH ACTION**
- § 8.7     **RELATION BACK OF AMENDED COMPLAINT WHERE  
MISTAKE IS MADE REGARDING IDENTITY OF PROPER  
PARTY TO SUE**

---

**Chapter 9    EXEMPLARY DAMAGES IN WRONGFUL DEATH ACTIONS**

---

**§ 9.1    HISTORICAL PERSPECTIVE**

**§ 9.2    STATUTORY CHANGES IN 2000**

---

**Chapter 10    LIABILITY ISSUES**

---

**§ 10.1    NATURE OF WRONGFUL ACT, NEGLIGENCE, OR DEFAULT  
THAT WILL GIVE RISE TO ACTION UNDER C.R.S.  
§ 13-21-202**

**§ 10.2    DECEDENT’S SURVIVOR MAY NOT ASSERT INDEPENDENT  
CLAIMS IN OWN NAME FOR CLAIMS THAT COULD HAVE  
BEEN MAINTAINED BY DECEDENT HAD HE OR SHE  
LIVED**

**§ 10.3    APPLICATION OF COMPARATIVE NEGLIGENCE AND PRO  
RATA LIABILITY STATUTES TO WRONGFUL DEATH  
ACTIONS**

§ 10.3.1—Plaintiff May Recover As Long As Negligence Attributable  
To Decedent Is Less Than Combined Negligence Of  
Defendant And Designated Non-Party

§ 10.3.2—Plaintiffs’ Decision To Ride In Vehicle With Intoxicated  
Driver Was Proper Basis For Affirmative Defense Of  
Comparative Negligence

§ 10.3.3—Evidence Of Motorcyclist’s Failure To Wear A Helmet And  
Lack Of A Driver’s License Is Inadmissible To Show  
Comparative Negligence In A Wrongful Death Action

**§ 10.4    DETERMINATION OF LEGAL DUTY IS A QUESTION OF  
LAW — FACTORS CONSIDERED BY COURTS**

§ 10.4.1—Automobile Dealer Had No Duty To Warn Decedent Of  
Hazard Posed By Inoperable Seat Belt

§ 10.4.2—Plumbing Contractor Had No Duty To Warn About A  
Defective Gas Connector On Stove On Which Contractor  
Did Not Work

§ 10.4.3—Sheriff Had No Duty To Protect Citizen From Escaped Jail  
Inmate

*Table of Contents*

§ 10.4.4—Where Child Was Killed In Sandwich Shop After Employee Let Stranger Into Shop After Hours, Complaint Alleged Sufficient Facts That Owner Breached Duty To Child As Licensee Under Premises Act

**§ 10.5 WRONGFUL DEATH CLAIMS AGAINST GOVERNMENTAL ENTITIES — APPLICATION OF THE COLORADO GOVERNMENTAL IMMUNITY ACT**

§ 10.5.1—Governmental Immunity For Emergency Vehicle Operators

§ 10.5.2—Governmental Immunity For Dangerous Condition Of County Road

§ 10.5.3—Governmental Immunity For Sanitation Facilities

§ 10.5.4—Governmental Immunity For Public Hospital

§ 10.5.5—Limit On Recovery Of Damages Under The CGIA

§ 10.5.6—Corporate Practice Of Medicine Rule Bars Claims Against Public Hospitals For Negligence Of Employed Physicians

§ 10.5.7—Governmental Immunity For Failure To Supervise Weight Room In Public Recreation Facility — Dangerous Conditions Of Public Buildings

**§ 10.6 ISSUES IN CASES OF DEATH BY SUICIDE, MURDER-SUICIDE, AND HOMICIDE**

§ 10.6.1—Liability Of Mental Health Facility For Death Of Suicidal Patient — Comparative Negligence Rules Apply

§ 10.6.2—Legal Duty To Prevent Another Person From Committing Suicide

§ 10.6.3—Legal And Factual Issues In Murder-Suicide Cases

§ 10.6.4—Actions Under The Slayer Statute, C.R.S. § 15-11-803

§ 10.6.5—Proximate Causation In Suicide Cases

**§ 10.7 GENERAL CAUSATION ISSUES**

§ 10.7.1—Remote Causation

§ 10.7.2—Negligence, Without Causation

**§ 10.8 APPLICABILITY OF ARBITRATION CLAUSES TO WRONGFUL DEATH CLAIMS**

**§ 10.9 WRONGFUL DEATH CLAIMS UNDER THE PREMISES LIABILITY ACT**

---

**Chapter 11 COMPENSATORY DAMAGES IN WRONGFUL DEATH ACTIONS**

---

- § 11.1 **LIMIT ON RECOVERY OF NON-ECONOMIC DAMAGES APPLIES ON A PER-CLAIM BASIS; THE LIMIT APPLIES COLLECTIVELY TO ALL PLAINTIFFS IN SUIT, AND DOES NOT APPLY ON A PER-DEFENDANT BASIS**
- § 11.2 **RECOVERY OF ECONOMIC LOSSES — ILLUSTRATIVE CASES**
- § 11.3 **SUMMARY OF GENERAL PRINCIPLES CONCERNING APPLICATION OF THE NET PECUNIARY LOSS RULE TO DETERMINE RECOVERY OF COMPENSATORY DAMAGES FOR ECONOMIC LOSS**
- § 11.4 **ADMISSIBILITY OF EVIDENCE OF SETTLEMENT**
- § 11.5 **RECOVERY OF THE SOLATIUM AMOUNT UNDER C.R.S. § 13-21-203.5**
  - § 11.5.1—Applicability Of The Comparative Negligence Statute To Recovery Of Solatium Amount
  - § 11.5.2—Solatium Award Is Not Subject To Reduction Based Upon Settlement That Plaintiff Receives From Former Defendant
- § 11.6 **EVIDENCE OF A DECEDENT’S FUTURE INCOME TAX LIABILITY IS NOT ADMISSIBLE FOR PURPOSES OF CALCULATING NET PECUNIARY LOSS**
- § 11.7 **IN SOME WRONGFUL DEATH ACTIONS, OTHER STATUTORY CAP PROVISIONS, NOT THE STATUTORY CAPS IN THE WDA, MAY LIMIT THE AMOUNT OF RECOVERABLE DAMAGES**
- § 11.8 **PREJUDGMENT INTEREST AS AN ELEMENT OF DAMAGES**

---

**Chapter 12 APPLYING DRAM SHOP LIABILITY LAWS TO WRONGFUL DEATH ACTIONS**

---

- § 12.1 **TAVERN OWNER IS NOT LIABLE FOR DEATH OF INTOXICATED PATRON RESULTING FROM PATRON’S OWN CONSUMPTION OF ALCOHOL**

*Table of Contents*

- § 12.2 EMPLOYER, ACTING AS SOCIAL HOST, IS NOT LIABLE UNDER THE DRAM SHOP ACT FOR DEATH RESULTING FROM EMPLOYEE'S CONSUMPTION OF ALCOHOLIC BEVERAGES ON EMPLOYER'S PREMISES**

---

**Chapter 13 CONSTITUTIONAL ISSUES ARISING FROM COLORADO'S WRONGFUL DEATH ACT**

---

- § 13.1 CONSTITUTIONAL CHALLENGES TO THE WDA**
- § 13.2 MINIMUM CONTACTS NECESSARY TO ESTABLISH PERSONAL JURISDICTION OVER FOREIGN DEFENDANT**

---

**TABLE OF AUTHORITIES**

---

---

**SUBJECT INDEX**

---

---

**APPENDICES**

---

- Appendix A SAMPLE COMPLAINT AND JURY DEMAND**
- Appendix B SAMPLE ANSWER TO COMPLAINT AND JURY DEMAND**



